



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY VALLEY REGIONAL OFFICE

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STATE WATER CONTROL BOARD & VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO FREDERICK COUNTY FOR FREDERICK COUNTY LANDFILL VPDES Permit No. VAR051409 Solid Waste Permit No. SWP040, SWP529, SWP581

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15 and Va. Code § 10.1-1455, between the State Water Control Board, the Virginia Waste Management Board, and Frederick County, regarding the Frederick County Landfill for the purpose of resolving certain violations of the State Water Control Law, Virginia Waste Management Act, the applicable permits, and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "2014 Stormwater Permit" means VPDES Permit No. VAR051409 which was issued under the State Water Control Law and the Regulation to Frederick on July 1, 2014 and which expired on June 30, 2019, but is administratively continued. On July 1, 2019, DEQ reissued coverage under the Stormwater Permit to Frederick.
2. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and

the public an accurate and comprehensive assessment of the quality of State surface waters.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "Facility" or "Landfill" means the Sanitary Landfill, Construction/Demolition/Debris (CDD) Landfill, and a closed in place landfill, located at 280 Landfill Road in Winchester, Virginia.
9. "Frederick" means Frederick County, a political subdivision of the Commonwealth of Virginia. Frederick is a "person" within the meaning of Va. Code § 10.1-1400 and § 62.1-44.3.
10. "Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials from such waste. Leachate and any material with which it is mixed is solid waste; except that leachate that is pumped from a collection tank for transportation to disposal in an offsite facility is regulated as septage, leachate discharged into a waste water collection system is regulated as industrial waste water and leachate that has contaminated groundwater is regulated as contaminated groundwater.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15 and under Va. Code § 10.1-1455.
12. "O&M" means operations and maintenance.

13. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
14. “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
15. “Pollution” means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are “pollution.” Va. Code § 62.1-44.3.
16. “Regulation” means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
17. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. “State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
19. “Va. Code” means the Code of Virginia (1950), as amended.
20. “VAC” means the Virginia Administrative Code.
21. “Virginia Waste Management Act” means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.
22. “VPDES” means Virginia Pollutant Discharge Elimination System

23. “VSWMR” means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*
24. “Waste Board” means the Virginia Waste Management Board, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
25. “Water Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

SECTION C: Findings of Fact and Conclusions of Law

1. Frederick owns and operates a Sanitary Landfill, Construction/Demolition/Debris (CDD) Landfill, and a closed in place landfill, collectively referred to as the Facility.
2. Opequon Creek is located within the Shenandoah River Basin and is listed as impaired in the 303(d) report for E-Coli and benthic macroinvertebrates (sediment). Sources of impairment are municipal (urbanized, high density area), wildlife other than waterfowl, and non-point source agriculture.
3. On December 30, 1971, Frederick was granted Solid Waste Permit Number 40 (Permit 40) to operate a Sanitary Landfill by the Commissioner of the Virginia Department of Health, predecessor-in-interest to the Director of DEQ. On September 6, 1995, Frederick entered into post-closure care for the closed Permit 40 landfill.
4. On August 5, 1989, Frederick was granted Solid Waste Permit Number 529 (Permit 529) to operate a Sanitary Landfill by the Commissioner of the Virginia Department of Health, predecessor-in-interest to the Director of DEQ. Permit 529 allows Frederick to dispose of sanitary waste, tire storage and shredding, poultry waste, and other various solid waste.
5. On January 8, 1998, Frederick was granted Solid Waste Permit Number 591 (Permit 591) to operate a CDD Landfill. Permit 591 allows Frederick County to dispose of CDD waste at the Facility.
6. On July 2, 2014, DEQ issued Frederick coverage under the 2014 Stormwater Permit. On July 1, 2019, DEQ reissued coverage under the Stormwater Permit to Frederick.
7. On May 21, 2018, DEQ staff inspected the Facility for compliance with Permit 529, Permit 591, and Permit 40. Frederick was not bypassing leachate from the Facility at the time of this inspection.

8. On May 22, 2018, Frederick notified DEQ of a bypass and leachate discharge to Opequon Creek from the Facility that occurred from May 16th through May 20th. Frederick reported the bypass event discharged an estimated 1,350,000 gallons of liquid from the leachate collection system associated with Permit 40 to Opequon Creek. Frederick represented to DEQ that it bypassed the untreated leachate to protect the integrity of the leachate pond berm, and to prevent overflow of highly concentrated leachate from the Permit 529 leachate treatment ponds. Frederick stated in the letter that the bypass was a result of rainfall. Rain gauge data submitted by Frederick indicated that the Facility received 0.70 inches of rain on May 14, 2018, 2.20 inches of rain on May 15, 2018, 0.70 inches of rain on May 16, 2018, 2.50 inches of rain on May 17, 2018, 0.60 inches of rain on May 18, 2018, 0.90 inches of rain on May 19, 2018, and 0.10 inches of rain on May 20, 2018.
9. On May 25, 2018, Frederick notified DEQ that the stormwater pond serving Permit 529 turned black due to believed leachate/seeps and discharged to the UT to Opequon Creek. On May 26, 2018, Frederick installed aeration on the stormwater pond at the Facility, to try to encourage reduction of Biological Oxygen Demand (BOD).
10. In the month of May 2018, Frederick reported that 2,408,000 gallons were discharged from the Facility to the Opequon Water Reclamation Facility (OWRF). Total rainfall for the month of May 2018, as submitted by Frederick, was 9.35 inches.
11. On June 4, 2018, Frederick notified DEQ via email that on June 3, 2018, Frederick began bypassing leachate from the Permit 40 leachate pond to Opequon Creek. On June 4, 2018, DEQ staff visited the Facility and observed the discharge of leachate from the Permit 40 leachate pond via bypass to Opequon Creek. No evidence of a fish kill was observed.
12. On June 5, 2018, Frederick submitted an update to DEQ regarding the bypass from Permit 40 leachate pond. Frederick stated that on June 2, 2018, the Facility received 1.90 inches of rain and an additional 2.80 inches of rain on June 3, 2018, leaving only nine inches of freeboard in the Permit 529 leachate treatment ponds.
13. On June 6, 2018, DEQ issued NOV No. 2018-VRO-008 to Frederick for the unpermitted discharges from the Facility to Opequon Creek, as well as for the lack of storage in the Facility's leachate treatment ponds. On June 7, 2018, Frederick responded to the NOV, and scheduled a meeting to discuss the on-going discharges from the Facility.
14. On June 13, 2018, Frederick submitted the 5-day letter for the June 3rd through June 5th bypass event from the Permit 40 leachate pond. In the letter, Frederick approximated that 1,090,000 gallons of leachate were bypassed and discharged into Opequon Creek as a result of significant rainfall. In addition, Frederick collected samples of the leachate bypass wastewater, and submitted the results to DEQ for

review. No fish kill was observed.

15. On June 20, 2018 and June 25, 2018, DEQ staff visited the Facility, to assess the treatment ponds for all Permits at the Facility. On June 24, 2018, Frederick notified DEQ of a Permit 40 leachate bypass, which started on June 23, 2018. During the June 25, 2018 Facility inspection, DEQ staff observed the Permit 40 leachate pond in bypass, and that the discharge reached Opequon Creek.
16. On June 29, 2018, Frederick submitted a 5-day letter to DEQ in relation to the June 23rd through June 25th bypass of leachate to Opequon Creek. Frederick estimated that 675,000 gallons of leachate were discharged to Opequon Creek as a result of significant rainfall. Again, Frederick included rainfall information as follows: 0.95 inches of rain on June 21, 2018, 1.35 inches of rain on June 22, 2018, 1.60 inches of rain on June 23, 2018, and 0.25 inches of rain on June 24, 2018.
17. For the month of June 2018, Frederick noted that 3,474,000 gallons of leachate were pumped to the OWRF, and an additional 1,447,000 gallons were transported to various wastewater treatment facilities. Total rainfall, as submitted by Frederick, for the month of June 2018 was 12.3 inches.
18. On July 11, 2018, DEQ staff, met with Frederick representatives and Frederick's consultant to discuss the June 6, 2018 NOV. Throughout the meeting, Frederick referenced the above average rainfall for the Frederick County area during the unpermitted discharge events, as well as Executive Order 10, the Declaration of a State of Emergency for the Commonwealth of Virginia due to Severe Weather and Flooding, issued on June 8, 2018. Documentation submitted by Frederick at this meeting detailed the rain events day by day, which were measured at the Facility by Frederick staff, preliminary sampling results from the Permit 529 stormwater pond, and the bypassed leachate from the Permit 40 pond, as well as preliminary design for a proposed 3.50 million gallon leachate storage/treatment pond. Dialogue with Frederick conveyed that the volume of discharge into the Permit 40 pond went from approximately 15-20 gallons per minute, to over 200 gallons per minute with a one inch rain event. Frederick also detailed actions taken to try to increase freeboard in all leachate treatment ponds at the Facility, which included negotiations with the owner of OWRF, Frederick-Winchester Service Authority, to increase daily flow to OWRF, as well as daily hauling via trucking to other wastewater treatment facilities. Frederick secured SCS Engineers to design the proposed 3.50 million gallon leachate treatment pond for the Facility. DEQ agreed to prioritize response to questions and review, with regards to the required Permit Modification as a result of the additional treatment unit for the Permit 529 landfill.
19. On July 16, 2018, Frederick notified DEQ of a clogged leachate force main, which resulted in 6,000 gallons of leachate being discharged to Opequon Creek from the Permit 591 landfill. Frederick additionally notified DEQ of a discharge to state waters

- from the Permit 529 stormwater pond, which was plugged to prevent a discharge, as a result of the previous June 2018 leachate discharge to the stormwater pond. Frederick sampled the discharges. Additionally on July 16, 2018, DEQ staff performed a Focus and Annual Inspection of the Permit 40 landfill at the Facility. DEQ noted that Frederick should continue to coordinate with DEQ on the Facility's Permit modification, and to maintain freeboard in the Permit 40 leachate treatment pond.
20. On July 17, 2018, Frederick notified DEQ that the clog in the leachate force main for Permit 591 landfill was not able to be cleared due to the length of the line, over 2,000 linear feet, and that Frederick would place a temporary pipe to reroute the leachate from the Permit 591 pond via a temporary pipe to the Permit 40 leachate treatment pond. Additionally, Frederick noted that to increase freeboard, truckers were employed to haul the leachate to a wastewater treatment facility.
 21. On August 9, 2018, DEQ issued NOV No. 2018-VRO-005 to Frederick for the unpermitted discharge of leachate to Opequon Creek from the Permit 591 landfill. Frederick confirmed receipt of the NOV on the same day, and responded to say that ongoing efforts were in place to clean out the contaminated stormwater pond serving the Permit 529 landfill, as well as the design for the proposed leachate pond discussed during the July 2018 enforcement meeting.
 22. On August 10, 2018, Frederick's consultant submitted the Concept Plan and Layout for the proposed leachate pond to DEQ for review and comment.
 23. On September 5, 2018, DEQ staff met with Frederick representatives and their consultant to discuss the Concept Plan for the leachate pond. DEQ provided comments to Frederick, and reviewed the process for the construction, permitting, and operation of the proposed pond.
 24. On September 14, 2018, Frederick submitted documentation to DEQ, confirming that Frederick completed the clean-out of the stormwater pond serving Permit 529. The clean-out pumped the wastewater from the pond into the Facility's Permit 529 leachate treatment ponds, as well as removed contaminated sediment from the bottom of the stormwater pond. Normal operations for the stormwater pond were restored on September 7, 2018.
 25. On September 28, 2018, DEQ staff performed an Industrial Stormwater Inspection of the Facility. At the time of the inspection, DEQ staff observed that Frederick was bypassing leachate from the Permit 40 leachate pond to Opequon Creek. Additionally, DEQ staff observed leachate on the rain cover at the Permit 591 landfill. Along the toe of the slope was a mixed waste berm, consisting of solid waste and soil, which directed both leachate and stormwater onto the rain cover for the Permit 591 landfill. The rain cover for the Permit 591 landfill drains to a stormwater basin and was discharging at the time of the inspection. DEQ does not have record of

notification of the leachate discharge.

26. During the inspection on September 28, 2018, DEQ observed Aboveground Storage Tanks (ASTs) requiring registration. On January 23, 2019, Frederick registered the five ASTs with DEQ, which store diesel, gasoline, and used oil.
27. On September 28, 2018, Frederick notified DEQ of an unpermitted discharge of leachate to Opequon Creek. Frederick had little to no freeboard in the Permit 529 leachate treatment ponds, and to protect the integrity of the Permit 40 leachate treatment pond, Frederick bypassed the leachate into Opequon Creek. On October 2, 2018, Frederick submitted a 5-day letter, and reported that approximately 800,000 gallons of leachate were discharged to Opequon Creek. Excessive rainfall was the reported reason, and Frederick stated that in September 2018, the Facility received an additional 10.4 inches.
28. On October 1, 2018, DEQ waste staff inspected the Permit 591 landfill and observed that leachate was discharging from four leachate seeps at the toe of the slope in the east face of the Phase II cell onto the rain cover over the unused portion of the adjacent Phase III cell. Chemical trails from previous and ongoing leachate releases and sediment were present on the portion of the rain cover covering the western half of the Phase III cell.
29. On November 27, 2018, DEQ issued NOV No. 2018-VRO-0020 to Frederick County for the unpermitted discharges to state waters, and improper management of leachate.
30. On December 4, 2018, DEQ staff performed a solid waste inspection for Permit 40, noting that the freeboard was limited at the Facility for all leachate treatment ponds. In a follow up email to Frederick, DEQ provided authorization for Frederick to use the newly constructed, lined leachate pond for temporary storage of leachate; authorization was given in advance of a large storm event to prevent additional unpermitted discharges of leachate to state waters. On December 26, 2019, Frederick notified DEQ that it did not need to use the newly constructed pond, and that Frederick's goal was to not use the pond until the Certificate to Operate (CTO) was issued by DEQ.
31. December 5, 2018, DEQ staff met with Frederick to obtain an update regarding the construction of the new leachate pond. DEQ observed that the majority of the earthwork was complete at the time of the meeting, and that liner deployment was planned within the week.
32. On December 28, 2018, DEQ received a Certification Report, which included a construction quality assurance certification for the Facility, from Frederick's consultant. Additional information was submitted to DEQ on February 12, 2019. On February 7, 2019, DEQ received the design engineer's certification for the Facility.

Additionally, on December 28, 2018, Frederick notified DEQ that it was going to divert flow from the Permit 40 leachate pond to the newly constructed pond.

33. On February 21, 2019, DEQ solid waste staff inspected the Permit 591 landfill, and documented Frederick's return to compliance for the CDD Landfill.
34. On March 12, 2019, DEQ solid waste staff inspected the Permit 529 landfill, noting that several locations on the working face of the landfill had not been completely covered with mulch as a daily cover. On April 18, 2019, Frederick responded that it would move towards the implementation of a tarp for daily cover, and that by April 30, 2019, training of Frederick staff would be completed by the manufacturer of the tarping system.
35. On March 13, 2019, DEQ issued the CTO to Frederick for the newly constructed leachate treatment pond.
36. Beginning in April 2019, Frederick has started submitting weekly leachate treatment pond freeboard levels to DEQ for review.
37. On April 23, 2019, DEQ staff met with Frederick representatives and Frederick's consultant to cover any outstanding compliance issues, obtain a status update on Frederick's construction of the new leachate pond and ongoing inflow investigations, as well as cover next steps for enforcement. In the meeting, Frederick conveyed that by the end of May 2019, the pump would be installed in the newly constructed leachate pond, and provided an overview of the new process at the Facility for treatment of leachate. Additionally, Frederick and DEQ discussed the potential, future endeavor of Frederick with the installation of a wastewater treatment facility at the Facility; DEQ explained the requirements necessary to obtain an individual discharge permit. As a result of the meeting, DEQ requested Frederick to submit a sampling work plan by May 6, 2019, detailing how and when leachate samples would be collected. DEQ also requested Frederick install flow meters, where feasible, prior to the leachate entering the treatment ponds in an effort to ascertain sources of high flows during storm events. Frederick also agreed to submit an updated treatment process/flow map to DEQ, including all new and existing infrastructure in the leachate treatment system. Throughout the meeting, DEQ emphasized to Frederick the importance of identifying where the inflow, intrusion, and/or infiltration is entering the Permit 40 closed landfill.
38. On June 2, 2019, Frederick submitted a Work Plan for the Permit 40 leachate investigation. The Work Plan includes the development of an update of the leachate collection system in and around the Permit 40 landfill, manhole and piping replacement in the Permit 40 leachate collection system, installation of flow meters, increased inspection frequency of the Permit 40 landfill, installation and full operation of the new leachate treatment pond, and installation of additional

underdrains. On August 1, 2019, Frederick submitted a revision to the Work Plan based on DEQ's June 20, 2019 comments. On August 7, 2019, DEQ approved the Work Plan submitted by Frederick on August 1, 2019, and DEQ will track compliance through DEQ's Solid Waste Permitting and Compliance Programs.

39. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
40. Va. Code § 62.1-44.5(B) states that: "Any person in violation of the provisions of subsection A who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon learning of the discharge, promptly notify, but in no case later than 24 hours the Board."
41. 9 VAC 20-81-130(H)(1,3) states that: "Facilities shall be designed to provide and maintain: A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a 24-hour, 25-year storm... Drainage structures shall be installed and continuously maintained to prevent ponding and erosion, and to minimize infiltration of water into solid waste cells."
42. 9 VAC 20-81-140(A)(6)(a) requires that: "Landfills shall not: Allow leachate from the landfill to drain or discharge into surface waters except when treated onsite and discharged into surface water as authorized under a VPDES Permit; Cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act (33 USC § 1251 et seq.), including, but not limited to, the VPDES requirements and Virginia Water Quality Standards."
43. 9 VAC 20-81-210(B) requires that: "Tanks and surface impoundments used for storage of leachate shall have a flow equalization and surge capacity at least equal to the maximum expected production of leachate for any seven-day period for the life of the facility estimated under subdivision A 1 of this section. Leachate storage capacity may not be considered to include leachate that may have collected in or on the liner system. Storage tanks and impoundments shall be aerated, as necessary, to prevent and control odors."
44. 9 VAC 20-81-210(D)(4) requires that: "The collected leachate shall be...treated onsite and discharged into surface water when authorized under VPDES permit."
45. 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.

46. 9 VAC 25-151-190(D)(2)(a), states that: “As part of the preventive maintenance program, the permittee shall maintain: all elements of leachate collection and treatment systems to prevent commingling of leachate with stormwater and the integrity and effectiveness of any intermediate or final cover (including making repairs to the cover as necessary), to minimize the effects of settlement, sinking, and erosion.”
47. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
48. The Department has issued no discharge permits or certificates to Frederick County other than VPDES Permit No. VAR051409.
49. Opequon Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
50. Based on the results of the notification documentation submitted on May 22, 2018, May 25, 2018, June 4, 2018, June 5, 2018, June 13, 2018, June 24, 2018, June 29, 2018, July 16, 2018, July 17, 2018, October 1, 2018, inspections by DEQ staff on May 30, 2018, June 20, 2018, June 25, 2018, July 23, 2018, September 28, 2018, December 4, 2018, March 12, 2019, and meetings on July 11, 2018, September 5, 2018, and April 23, 2019, the Waste Board and the Water Board conclude that Frederick County has violated the 2014 Stormwater Permit, SWP040, SWP529, SWP581, Va. Code 62.1-44.5, 62.1-44.5(B), 9 VAC 20-81-140(A)(6)(a), 9 VAC 20-810-210(D)(4), 9 VAC 20-81-130(H)(1,3), 9 VAC 20-81-210-(B), 9 VAC 25-31-50, 9 VAC 25-151-190(D)(2)(a) by discharging untreated leachate from the Facility, while concurrently failing to comply with the conditions of the Permits, as described in paragraph C(8)-C(46) above.
51. Frederick County submitted documentation on August 1, 2019 and DEQ staff inspected the Facility and verified that the violations as described in paragraphs C(8) through C(46) above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15 and Va. Code § 10.1-1455, the Waste Board and the Water Board orders Frederick County and Frederick County agrees to:

Pay a civil charge of \$139,860 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Frederick County shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Frederick County shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Waste Board and Water Board may modify, rewrite, or amend this Order with the consent of Frederick County for good cause shown by Frederick County, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order, in NOV No. 2018-VRO-008, dated June 6, 2018, in NOV No. 2018-VRO-005, dated August 9, 2018, and in NOV No. 2018-VRO-0020, dated November 27, 2018. This Order shall not preclude the Waste Board, Water Board, or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Frederick County admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Frederick County consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Frederick County declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be

construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Waste Board and/or Water Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Frederick County to comply with any of the terms of this Order shall constitute a violation of an order of the Waste Board and/or Water Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Waste Board, Water Board, or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Frederick County shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Frederick County shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Frederick County shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Frederick County. Nevertheless, Frederick County agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Frederick County has completed all of the requirements of the Order;
 - b. Frederick County petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Frederick County.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Frederick County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Frederick County and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Frederick County certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Frederick County to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Frederick County.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Frederick County voluntarily agrees to the issuance of this Order.

Consent Order
Frederick County
VPDES Permit No. VAR051409
Solid Waste Permit Nos.: SWP040, SWP529, SWP581
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And it is so ORDERED this _____ day of _____, 2020.

Amy T. Owens, Regional Director
Department of Environmental Quality

Consent Order
Frederick County
VPDES Permit No. VAR051409
Solid Waste Permit Nos.: SWP040, SWP529, SWP581
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Frederick County voluntarily agrees to the issuance of this Order.

Date: 11/14/19 By: [Signature] County Administrator
(Person) (Title)
Frederick County

Commonwealth of Virginia

City/County of Winchester

APPROVED AS TO FORM
[Signature] 11/14/2019
COUNTY ATTORNEY

The foregoing document was signed and acknowledged before me this 14th day of
November, 2019, by Kris C. Tierney who is
County Administrator of Frederick County, on behalf of Frederick County.

[Signature]
Notary Public

7011423
Registration No.

My commission expires: 11/30/2020